

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Civil Action No.:

v.

**TEXAS TELEVISION, INC., GULF
COAST BROADCASTING COMPANY,
and K-SIX TELEVISION, INC.,**

Defendants.

COMPLAINT

The United States of America, by its attorneys and acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Texas Television, Inc., Gulf Coast Broadcasting Company, and K-Six Television, Inc., and complains and alleges as follows:

I.

JURISDICTION, VENUE AND DEFENDANTS

1. This complaint is filed under Section 4 of the Sherman Act, 15 U.S.C. § 4, to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1337.

2. Defendant Texas Television, Inc., a Texas corporation, is the parent company of television station KIII-TV, the American Broadcasting Company affiliate located in and

operating from Corpus Christi, Texas. Texas Television, Inc. is found and transacts business within the Southern District of Texas.

3. Defendant Gulf Coast Broadcasting Company, a Texas corporation, is the parent company of television station KRIS-TV, the National Broadcasting Company affiliate located in and operating from Corpus Christi, Texas. Gulf Coast Broadcasting Company is found and transacts business within the Southern District of Texas.

4. Defendant K-Six Television, Inc., a Texas corporation, is the parent company of television station KZTV-TV, the Columbia Broadcasting System affiliate located in and operating from Corpus Christi, Texas. K-Six Television, Inc. is found and transacts business within the Southern District of Texas.

5. Venue as to each Defendant is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391.

6. Whenever this Complaint refers to any corporation's act, deed, or transaction, it means that such corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they actively were engaged in the management, direction, control, or transaction of its business or affairs.

II.

TRADE AND COMMERCE

7. Prior to the passage of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (codified as amended in scattered sections of 47 U.S.C.) (the "Cable Act"), cable companies had been allowed to include locally broadcast television signals on their cable systems without first obtaining permission from local

broadcasters. The Cable Act changed this practice by forbidding cable companies from carrying the signals of local stations without the express authority of those stations. 47 U.S.C. § 325(b)(1).

III.

CONCERTED ACTION

8. Various firms and individuals, not made defendants in this Complaint, participated as co-conspirators with the Defendants in the violations alleged in this Complaint, and performed acts and made statements in furtherance thereof.

9. The Cable Act required each television broadcast station to elect one of two options. A station could choose "must-carry" status, giving up the right to seek compensation for its signal but gaining the right to require the cable company to carry it. Alternatively, a station could opt for the right to grant "retransmission consent," whereby the cable company could carry the station's signal only after it had negotiated mutually agreeable terms. 47 U.S.C. § 534. Under the Cable Act, retransmission consent must be renegotiated every three years.

10. In 1993, each of the Defendants' television stations broadcasting from Corpus Christi, Texas elected to seek retransmission consent agreements from at least four of the area cable companies: TCI Central, Inc., Falcon Cable TV, Post-Newsweek Cable, Inc., and Crown Media, Inc. The ensuing negotiations and subsequent execution of the contracts took place across state lines.

11. TCI Central, Inc. ("TCI Central"), a Colorado-based corporation, operates cable systems in numerous states. TCI Cablevision of Texas, Inc. is a subsidiary of TCI Central

incorporated in the State of Texas. It operates the cable system in the city of Corpus Christi, serving approximately 53,000 homes there in 1993.

12. Falcon Cable TV ("Falcon"), a California-based corporation, operates cable systems in several states, including Texas. Falcon serves Portland, Texas, a community 8 miles north of Corpus Christi. In 1993, Falcon served about 9,000 homes in and around Portland.

13. Post-Newsweek Cable, Inc. ("Post-Newsweek"), an Arizona-based corporation, operates cable systems in several states, including Texas. Post-Newsweek serves several small communities within 35 miles north of Corpus Christi. These include Aransas Pass, Ingleside and Ingleside by the Bay. In 1993, Post-Newsweek served a total of about 5,300 homes in and around those communities.

14. Crown Media, Inc., a Texas-based corporation, operated several cable systems in Texas during the relevant time period. Crown Media served Kingsville, Texas, a community 35 miles south of Corpus Christi. In 1993, Crown Media served about 5,200 homes in and around Kingsville. Subsequent to the subject matter of this civil action, Crown Media and its assets were sold to Charter Communication, Inc. and Marcus Cable.

15. The Defendants and their subsidiaries obtain from out-of-state sources television programming and advertising for redistribution via broadcast and cable.

16. The Defendants' business activities and operations are within the flow of and substantially affect interstate commerce.

IV.

VIOLATION ALLEGED

17. Beginning in July 1993 and continuing until the date of this Complaint, the Defendants entered into combinations and conspiracies in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. These unlawful combinations and conspiracies will continue or may be renewed unless the requested relief is granted.

18. These combinations and conspiracies consisted of agreements, understandings and concerted actions among the Defendants to increase the price of retransmission rights to cable companies.

19. For the purpose of forming and carrying out these agreements, each Defendant did the following things, among others:

- a. agreed not to enter into a retransmission consent agreement with any cable company until that company had reached agreements with all three Defendants;
- b. agreed not to accept a retransmission consent agreement with any cable company if that agreement gave that Defendant a competitive advantage over the other two Defendants; and
- c. agreed to exchange information with each other on the progress being made and the terms being considered in each Defendant's retransmission consent negotiations, in order to carry out these agreements.

V.

EFFECTS

20. These violations had and will continue to have the following direct, substantial, and reasonably foreseeable effects, among others:

- a. restraining, suppressing and eliminating competition for cable services among the Defendants;
- b. increasing the cost of retransmission rights to the cable companies;
- c. suppressing the number of cable subscribers during the period that Defendants withheld retransmission consent;
- d. increasing the cost of business operations for the cable companies during the time that Defendants withheld their retransmission consent; and
- e. depriving cable companies and consumers of the benefits of free and open competition.

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter final judgment against the Defendants ordering them, and all persons acting in concert with them, as follows:

- 1. That each Defendant is hereby enjoined and restrained from directly or indirectly entering into, adhering to, maintaining, soliciting or knowingly performing any act in furtherance of any contract, agreement, understanding or plan with any television

broadcaster not affiliated with that Defendant relating to retransmission consent or retransmission consent negotiations.

2. That each Defendant is further enjoined and restrained from directly or indirectly communicating to any television broadcaster not affiliated with that Defendant:

a. Any information relating to retransmission consent or retransmission consent negotiations, including but not limited to, the negotiating strategy of any television broadcaster, or the type or value of any consideration sought by any television broadcaster; or

b. Any information relating to the negotiating strategy of any television broadcaster, or to the type or value of any consideration sought by any television broadcaster relating to any actual or proposed transaction with any multichannel video programming distributor.

3. That Plaintiff have such other relief as may be just and proper; and

4. That Plaintiff recover the costs of this action.

Dated: February 2, 1996

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